

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DENNIS EARL DORSEY JR.,

Plaintiff,

v.

DAVID FLEMING, et al.,

Defendants.

CASE NO. C12-2258-JCC

ORDER

This matter comes before the Court on the Report and Recommendation from the Honorable Magistrate Judge Mary Alice Theiler (Dkt. No. 55). Having thoroughly considered the Report and Recommendation and the balance of the record, the Court finds oral argument unnecessary and hereby ADOPTS the Report and Recommendation.

As Magistrate Judge Theiler notes, this entire lawsuit could be dismissed without prejudice for failure to prosecute because plaintiff has not kept the Court apprised of his current address. However, she recognizes that “[t]his is not the preferred resolution because defendants have fully briefed the issues and Mr. Dorsey has had numerous months to respond to their arguments and exhibits.” (Dkt. No. 55 at 6.) Defendants filed their motion to dismiss on May 20, 2013. (Dkt. No. 41.) Plaintiff filed submissions with the Court on May 23, June 5, and June 13, 2013. (Dkt. Nos. 45, 46, 48, 49, 50.) At some time before July 12, 2013, Plaintiff left a voicemail message with the Court indicating that he had a serious medical condition and was in the

1 hospital. The Court *sua sponte* renoted the motion to dismiss, changing the noting date from June
2 14, 2013, to the end of August. (Dkt. No. 53.) Plaintiff has made no further submissions or phone
3 calls to the Court. In these circumstances—where Plaintiff had notice of the motion to dismiss
4 and was making submissions throughout the time in which he could have responded—the Court
5 agrees with Magistrate Judge Theiler that dismissing the case for failure to prosecute is not the
6 preferred resolution.

7 Accordingly, the Court ORDERS:

- 8 (1) The Court adopts the Report and Recommendation (Dkt. No. 55);
9 (2) The claims against Llantada, Goodwin, Higgs, Dundersale, Townsend-Vickers, Jones,
10 and Kuritz for failure to satisfy PLRA exhaustion are DISMISSED without prejudice;
11 (3) The claims against defendants Anderson, McGloughlin, Jones-Vanderleest,
12 Ledgerwood, Pennington, Sanders, and Fleming are DISMISSED with prejudice for
13 failure to state a claim;
14 (4) The claim against defendant “Mr. Harvey” is dismissed without prejudice for failure
15 to serve him within 120 days;
16 (5) The Clerk is respectfully directed to send copies of this Order to the parties and to
17 Magistrate Judge Theiler.

18 DATED this 20th day of December 2013.
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25 John C. Coughenour
26 UNITED STATES DISTRICT JUDGE